

RD AN No. 3784 (1980-D)  
September 10, 2002

TO: State Directors  
Rural Development

ATTENTION: Rural Housing Program Directors,  
Guaranteed Loan Specialists,  
Rural Development Managers, and  
Community Development Manager

FROM: Arthur A. Garcia      *(Signed by Arthur A. Garcia)*  
Administrator  
Rural Housing Service

SUBJECT: Single Family Guaranteed Rural Housing Loan Program  
Acceptable Foreclosure Time Frames

**PURPOSE/INTENDED OUTCOME:**

The purpose of this Administrative Notice (AN) is to clarify and standardize the foreclosure due diligence time frame by state for single family housing loans guaranteed by the Rural Housing Service (RHS).

**COMPARISON WITH PREVIOUS AN:**

No previous AN has been issued on this subject.

**BACKGROUND:**

Due to a lack of specificity in RD Instruction 1980-D, there has been some inconsistency in the treatment of interest reductions resulting from untimely foreclosure institution or completion. RD Instruction 1980-D, §1980.371(d) states that lenders must make a decision regarding liquidation by the time the loan is three payments past due. RD Instruction 1980-D, §1980.374 states that foreclosure must be initiated within 90 days of the date the decision to liquidate is made unless the foreclosure has been delayed by law or an alternative to foreclosure is

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September 30, 2003

FILING INSTRUCTIONS:  
Preceding RD Instruction 1980-D

recommended to resolve the delinquency. Initiation of foreclosure begins with the first public action required by law, such as filing a Complaint or Petition, recording a Notice of Default, or publication of a Notice of Sale. No guidance is given in RD Instruction 1980-D as to what is considered a reasonable time frame to complete a foreclosure in the state in which the property is located. Some State Offices have developed and implemented their own foreclosure time frames by which to curtail interest on loss claims, notifying lenders of the time frame at the time of claim settlement. This AN establishes state specific guidance for time frames for completing foreclosure for legal actions initiated after the date of this notice.

An analysis of acceptable foreclosure time frames used by Fannie Mae, Freddie Mac, Federal Housing Administration (FHA), Veteran's Administration (VA), and national networks of private foreclosure attorneys (LOGS and USFN), was performed. RHS has decided to adopt Freddie Mac's foreclosure time frames because they are measured from the first legal action, which is in accordance with RD Instruction 1980-D, to the foreclosure sale date, which is when the six-month REO marketing time period begins. Basic timelines of foreclosure processes most commonly utilized by private attorneys in state courts compare favorably to the Freddie Mac time frames. Additionally, Freddie Mac time frames are measured in days as opposed to months making it easier to determine compliance and calculate interest reductions.

#### **IMPLEMENTATION RESPONSIBILITIES:**

RHS will use the foreclosure time frames as prescribed in Attachment 1, when determining whether a lender has exercised diligence in completing the foreclosure process. Differences in state procedures will affect the length of time required to complete foreclosure, therefore, the required time will depend on the location of the property.

Attachment 1 lists the recommended method of foreclosure and the first public action required by law to initiate each foreclosure method. In states where more than one foreclosure method is available but only one option is listed, the Agency chose the method that is most cost effective in reducing legal fees and accrued interest expense. The Agency does not intend to prohibit the payment of claims where the lender obtains title through a method of foreclosure other than what is recommended. However, the State Offices must determine whether the foreclosure method chosen by the lender was in the best interest of the Government. For example, if the recommended foreclosure method is non-judicial, but judicial foreclosures are required to preserve the lender's right to a deficiency judgment, the lender may demonstrate that recovery on a deficiency judgment is expected after considering the time and cost of litigation. In such case, the foreclosure method should be considered acceptable.

RHS foreclosure time frames start with the date of the first legal action required by law, end with the foreclosure sale date, and do not include post-sale redemption periods or sale confirmations. Since redemption periods may be adjusted under some state laws based on the circumstances surrounding a property, such as the amount of unpaid principal still owed or the occupancy status

of the property, reasonable time frames for redemption periods and sale confirmations should be established on a case-by case basis in accordance with state law. Reimbursement of accrued interest may be reduced in accordance with RD Instruction 1980-D §1980.376(b) for each day that the foreclosure continues past the prescribed time frame unless a valid reason can be presented by the lender that justifies the delay.

Lenders and Rural Development State Offices must ensure that staff members are familiar with state guidelines related to foreclosures. Exceptions to the foreclosure time frame which cause delays beyond the lender's control must be documented and submitted with the claim package. Examples of such circumstances include bankruptcy petitions filed after foreclosure initiation, contested foreclosures, court scheduling delays or delays in obtaining service. Supporting documentation includes attorney correspondence or copies of court records. Lenders are responsible for including documentation to support the first public action and the foreclosure sale date in the claim package provided to the Agency office responsible for processing the loss.

The lender may be authorized a 60-day extension to the due diligence time frame for compliance with State law when a bankruptcy delays the completion of foreclosure. To determine the impact of a bankruptcy filing on the foreclosure due diligence time frame, the total number of days from first action to foreclosure sale will be calculated. The total number of days between the bankruptcy filing date and the date of bankruptcy release or dismissal for each applicable bankruptcy case will then be subtracted from the total number of foreclosure days. The resulting number of days will be compared to the RHS foreclosure time frame plus an automatic 60-day extension to determine if due diligence was met.

**Example -**

Property State - Georgia

RHS Due Diligence Time Frame - 67 Days

	<u>Date</u>	<u># of Days from Foreclosure Initiation</u>
1 <sup>st</sup> Publication Held	2/6/01	0
Bankruptcy Filed	3/1/01	23
Bankruptcy Released	9/14/01	220
Foreclosure sale republished	10/6/01	242
Foreclosure sale held	11/6/01	273

The total number of days between first publication and the foreclosure sale date is 273 days. The total number of days between bankruptcy filing and bankruptcy release was 197 days. The number of foreclosure days (273) minus the number of bankruptcy days (197) equals 76. The RHS due diligence time frame for Georgia is 67 days. Adding the 60-day extension brings the due diligence time frame to 127 days. This example demonstrates that the foreclosure was pursued diligently and the delay resulted from the state requirement to republish the foreclosure sale. As a result, the lender is not penalized for not meeting the due diligence time frame.

Each Rural Development State Office is responsible for notifying state-approved lenders of the new foreclosure time frame requirements. The National Office will advise nationally-approved lenders concurrent with the issuance of this AN.

In addition, during lender compliance reviews, files should be reviewed in an effort to ensure that lenders are complying with the foreclosure requirements. Lenders that are determined to be out of compliance should be counseled on the provisions of the regulations and should be monitored closely for future compliance.

Questions about this AN may be directed to Jenise Hight of the Single Family Housing Guaranteed Loan Division, USDA, Rural Housing Service, 1400 Independence Avenue, SW, Washington, DC 20250-0784. The telephone number is (202) 720-1452.

Attachment

State	No. of Days	Foreclosure Method	Initiation of Foreclosure Document
Alabama	75	Nonjudicial	Publication
Alaska	136	Nonjudicial	Recording of Notice of Default
Arizona	118	Nonjudicial	Recording of Notice of Default
Arkansas	116	Nonjudicial	Recording of Notice of Default
California	126	Nonjudicial	Recording of Notice of Default
Colorado	104	Nonjudicial	Filing of Foreclosure Docs with Public Trustee
Connecticut	176	Judicial	Delivery of Complaint to Sheriff
Delaware	210	Judicial	Complaint
Florida	151	Judicial	Complaint
Georgia	67	Nonjudicial	Publication
Guam	150	Nonjudicial	Notice of Default
Hawaii	137 270*	Nonjudicial Judicial	Publication of Notice of Intent to Foreclose Complaint
Idaho	187	Nonjudicial	Recording of Notice of Default
Illinois	287	Judicial	Complaint
Indiana	253	Judicial	Complaint
Iowa	312 312	Nonjudicial Judicial	Delivery of Notice to Clerk Petition
Kansas	180	Judicial	Complaint
Kentucky	194	Judicial	Complaint
Louisiana	216	Judicial	Petition for Executory Process
Maine	330	Judicial	Complaint
Maryland	47	Judicial	Filing an Order to Docket
Massachusetts	83	Nonjudicial	Filing Complaint Relative to Soldier's and Sailor's Relief Act
Michigan	75	Nonjudicial	Publication
Minnesota	100	Nonjudicial	Publication
Mississippi	85	Nonjudicial	Publication
Missouri	77	Nonjudicial	Publication
Montana	202	Nonjudicial	Recording of Notice of Sale
Nebraska	129	Judicial	Petition
Nevada	139	Nonjudicial	Publication of Notice of Sale
New Hampshire	78	Nonjudicial	Publication
New Jersey	274	Judicial	Complaint
New Mexico	192	Judicial	Complaint
New York	338	Judicial	Complaint
North Carolina	119	Nonjudicial	Notice of Hearing
North Dakota	150	Judicial	Complaint
Ohio	252	Judicial	Complaint
Oklahoma	217	Judicial	Petition
Oregon	173	Nonjudicial	Recording of Notice of Default
Pennsylvania	282	Judicial	Complaint
Puerto Rico	375	Judicial	Complaint
Rhode Island	83	Nonjudicial	Publication
South Carolina	189	Judicial	Complaint
South Dakota	203	Judicial	Complaint
Tennessee	72	Nonjudicial	Publication
Texas	60	Nonjudicial	Posting and Filing of Notice of Sale

<u>State</u>	<u>No. of Days</u>	<u>Foreclosure Method</u>	<u>Institution Document</u>
Utah	164	Nonjudicial	Recording of Notice of Default
Vermont	357	Judicial	Complaint
Virgin Islands	322	Judicial	Complaint
Virginia	71	Nonjudicial	Publication
Washington	156	Nonjudicial	Recording of Notice of Sale
West Virginia	61	Nonjudicial	Publication
Wisconsin	310	Judicial	Complaint
Wyoming	93	Nonjudicial	Publication

\* Foreclosure time frame established by RHS; Freddie Mac time frame not established in these states at this time.